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# In the Supreme Court of the United States

OCTOBER TERM, 1975

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GEORGE LAWSON, PETITIONER

*v.*

UNITED STATES OF AMERICA

---

RONALD SCHARF, PETITIONER

*v.*

UNITED STATES OF AMERICA

---

*ON PETITIONS FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT*

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## BRIEF FOR THE UNITED STATES IN OPPOSITION

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## INDEX


| | Page |
|---|---|
| Opinion below | 2 |
| Jurisdiction | 2 |
| Questions presented | 2 |
| Statement | 3 |
| Argument | 5 |
| Conclusion | 20 |


## CITATIONS

Cases:


| | |
|---|---|
| *Alderman* v. *United States*, 394 U.S. 165 | 5 |
| *Barker* v. *Wingo*, 407 U.S. 514 | 19 |
| *Berger* v. *United States*, No. 74-5500, certiorari denied, 420 U.S. 955 | 10, 11 |
| *DeMarrias* v. *United States*, 487 F.2d 19, certiorari denied, 415 U.S. 980 | 19 |
| *National Labor Relations Board* v. *Amalgamated Cloth. Wkrs. of America, AFL-CIO, L. 990*, 430 F.2d 966 | 17 |
| *Taylor* v. *McKeithen*, 407 U.S. 191 | 17 |
| *United States* v. *Acon*, 513 F.2d 513 | 7 |
| *United States* v. *Armocida*, 515 F.2d 29 certiorari denied, No. 74-6683, October 6, 1975 | 7 |
| *United States* v. *Chavez*, 416 U.S. 562 | 7, 11, 12 |
| *United States* v. *Clay*, 481 F.2d 133, certiorari denied, 414 U.S. 1009 | 19 |
| *United States* v. *Davis*, 487 F.2d 112, certiorari denied, 415 U.S. 981 | 19 |
| *United States* v. *Donovan*, 513 F.2d 337, petition for certiorari pending, No. 75-212 | 14 |

Cases—Continued


| | Page |
|---|---|
| *United States* v. *Falcone*, 364 F. Supp. 877, affirmed, 505 F.2d 478, certiorari denied, 420 U.S. 955 | 7, 10, 11, 12, 15 |
| *United States* v. *Giordano*, 416 U.S. 505 | 7, 11, 12 |
| *United States* v. *Iannelli*, 477 F.2d 999, affirmed on other grounds, 420 U.S. 770 | 14 |
| *United States* v. *James*, 494 F.2d 1007, certiorari denied, *sub nom. Jackson* v. *United States*, 419 U.S. 1020 | 9, 15, 17 |
| *United States* v. *Kahn*, 415 U.S. 143 | 15 |
| *United States* v. *Kalustian*, C.A. 9, No. 74-3314, decided August 4, 1975, opinion amended, December 11, 1975 | 16 |
| *United States* v. *Pacheco*, 489 F.2d 554, certiorari denied, 421 U.S. 909 | 15 |
| *United States* v. *Pellicci*, 504 F.2d 1106, certiorari denied, 419 U.S. 1122 | 6 |
| *United States* v. *Rizzo*, 492 F.2d 443, certiorari denied, 417 U.S. 944 | 14 |
| *United States* v. *Robertson*, 504 F.2d 289, certiorari denied, 421 U.S. 913 | 7 |
| *United States* v. *Sklaroff*, 506 F.2d 837, certiorari denied, No. 74-1249, October 6, 1975 | 12 |
| *Vigi* v. *United States*, No. 75-101, certiorari denied, October 20, 1975 | 6 |
| *Warth* v. *Seldin*, 422 U.S. 490 | 18 |


Statutes and rules:


| | |
|---|---|
| Omnibus Crime Control and Safe Streets Act of 1968, as amended, Title III, 18 U.S.C. 2510-2520 | 2, 5 |




Statutes and rules—Continued


| | Page |
|---|---|
| 18 U.S.C. 2511(2)(c) | 6 |
| 18 U.S.C. 2516(1) | 6 |
| 18 U.S.C. 2518(1)(c) | 15 |
| 18 U.S.C. 2518(3)(a) | 8 |
| 18 U.S.C. 2518(3)(b) | 8 |
| 18 U.S.C. 2518(3)(c) | 15 |
| 18 U.S.C. 2518(8)(a) | 10, 13 |
| 18 U.S.C. 2518(8)(d) | 13, 14 |
| 18 U.S.C. 2518(10)(a)(i) | 11 |
| 18 U.S.C. 4208(a)(2) | 3 |
| 21 U.S.C. 841(a)(1) | 3 |
| 21 U.S.C. 846 | 3 |
| Rule 22(2) of the Rules of the Supreme Court of the United States | 2 |
| Circuit Rule 28, United States Court of Appeals for the Seventh Circuit | 2, 17, 18 |


Miscellaneous:


| | |
|---|---|
| Gardner, *Ninth Circuit's Unpublished Opinions: Denial of Equal Justice?*, 61 A.B.A.J. 1224 (1975) | 17-18 |
| S. Rep. No. 1097, 90th Cong., 2d Sess. (1968) | 14, 15 |

# In the Supreme Court of the United States

OCTOBER TERM, 1975

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No. 75-659

GEORGE LAWSON, PETITIONER

*v.*

UNITED STATES OF AMERICA

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No. 75-5709

RONALD SCHARF, PETITIONER

*v.*

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*ON PETITIONS FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT*

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**BRIEF FOR THE UNITED STATES IN OPPOSITION**

---

## OPINION BELOW

The order of the court of appeals (Pet. App. 1-16)[1] is not reported.

## JURISDICTION

The judgment of the court of appeals (Pet. App. 17) was entered on August 20, 1975. A timely petition for rehearing was denied on October 6, 1975 (Pet. App. 18). The petitions for certiorari were filed on November 3, 1975 (Pet. No. 75-659) and November 6, 1975 (Pet. No. 75-5709).[2] The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

## QUESTIONS PRESENTED

1. Whether the government failed to comply with various provisions of Title III of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, 18 U.S.C. 2510-2520, and, if so, whether suppression of evidence is the appropriate remedy.

2. Whether the application of Circuit Rule 28 of the United States Court of Appeals for the Seventh Circuit, providing for nonpublication of certain written opinions, denied petitioner Scharf any constitutional rights.

3. Whether petitioner Lawson was deprived of his right to a speedy trial.

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[1] Unless otherwise indicated, all "Pet. App." references are to the appendix in No. 75-659.

[2] Scharf's petition (No. 75-5709) is thus out of time under Rule 22(2) of the Rules of this Court.



4. Whether the dismissal of a prior indictment was "with prejudice" so as to preclude trial of petitioner Lawson on the present indictment.

5. Whether the evidence showed a single conspiracy, as charged in the indictment, or multiple conspiracies.

## STATEMENT

After a jury trial in the United States District Court for the Northern District of Illinois, petitioners were convicted of conspiring to distribute cocaine, in violation of 21 U.S.C. 841(a)(1) and 846 (Pet. App. 1-2). Petitioner Lawson was sentenced to ten years' imprisonment, subject to the early parole eligibility provisions of 18 U.S.C. 4208(a)(2), to be followed by a special parole term of three years. Petitioner Scharf was sentenced to six years' imprisonment, also to be followed by a special parole term of three years (Pet. No. 75-659, p. 13). The court of appeals affirmed in an unpublished opinion (Pet. App. 1-16).

The evidence at trial showed that petitioner Scharf was a purchaser and distributor of cocaine in Chicago. Co-defendant Matthews[3] lived in Florida and had large quantities of cocaine for sale (Pet. App. 2). In August 1971, he sent a sample of the cocaine to Lawson, a resident of Jamaica, and asked whether Lawson knew of any prospective buyers. Lawson

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[3] Matthews pleaded guilty and testified for the government at the joint trial of Scharf, Lawson and co-defendant Bobbie Arnstein.

said that he did, Matthews gave him an unpublished telephone number, and shortly thereafter Scharf contacted Matthews. In the succeeding weeks both Scharf and Matthews traveled back and forth between Miami and Chicago. Scharf purchased a half-pound of cocaine from Matthews and subsequently sold a quantity of it to a government informant for $6,250 (Pet. App. 2-3). Thereafter, Lawson telephoned Matthews and asked when he could be expected to get paid for the transaction between Matthews and Scharf (Tr. 103).

In November 1971, Scharf arranged for Matthews to sell cocaine directly to the informant. By this time the government had obtained a wire interception order for two telephones listed in the name of Ira Sapstein, Scharf's roommate. Matthews was arrested during the transaction with the informant (Pet. App. 3).

Virtually all of the prosecution's evidence was adduced through the testimony of co-defendant Matthews, who eventually cooperated with the government. In addition the government introduced nine tape recordings of conversations intercepted pursuant to the court-authorized surveillance of Sapstein's telephones. Petitioner Lawson was not a party to any of these conversations, or indeed to any conversation intercepted throughout the period of surveillance. Exhibit 8T consisted of a conversation (on November 22, 1971) between petitioner Scharf and parties not involved in the narcotics conspiracy, in which the subject of cocaine was discussed and Scharf



referred frequently to the "Playboy Mansion." This was introduced primarily to inculpate co-defendant Arnstein, who lived in the Mansion. Exhibits 10T and 11T-1 consisted of conversations on November 17 and 18, 1971, between petitioner Scharf and Arnstein, relating generally to drugs, in which the government argued that code language ("boy" for heroin, "girl" for cocaine) was also used. Exhibits 9T-1, 9T-2, 11T-2, 11T-3, 12T-1, and 12T-2 consisted of conversations on November 16 and 18, 1971, between Scharf, Sapstein, the government informant, and Matthews relating to the informant's trip to Miami to purchase cocaine directly from Matthews.

## ARGUMENT

1. Both petitioners assert (Pet. No. 75-659, pp. 25-26; Pet. No. 75-5709, pp. 8-18) that the government failed in numerous respects to comply with certain provisions of Title III of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, 18 U.S.C. 2510-2520. Petitioner Lawson, however, has no standing to make this claim. As he concedes (Pet. No. 75-659, pp. 15, 23), he did not participate in any conversation intercepted by the government; indeed, his name was never even mentioned during any of the intercepted conversations. Nor was electronic surveillance ever maintained on any telephone on premises owned or leased by him. He may not, therefore, complain of alleged violations of the statute by the government regarding the interceptions of petitioner Scharf's conversations. *Alderman* v. *United States*, 394 U.S. 165, 176.

As to Scharf, while we acknowledge that some—although not all—of his charges of noncompliance are accurate, we submit that the court below correctly ruled that the noncompliance was not so significant as to warrant suppression.[4] There is no conflict among the circuits on any point raised by petitioners, and the case presents no issues meriting further review.

a. Petitioner Scharf's first contention (Pet. No. 75-5709, pp. 10-13) is that an Acting Assistant Attorney General has no statutory authority to authorize a wire interception and that therefore the order authorizing the interceptions over Sapstein's telephones, signed by Acting Assistant Attorney General Petersen, was void on its face. We submit, on the contrary, that an Acting Assistant Attorney General, when specially designated under 18 U.S.C. 2516(1), may lawfully authorize an application for an intercept order. Cf. *United States* v. *Pellicci*, 504 F.2d 1106 (C.A. 1), certiorari denied, 419 U.S. 1122.[5] But suppression is not required in any event, since, as

[4] Exhibits 11T-2 and 12T-1 are in any case not subject to suppression under Title III, since they were conversations between Scharf and the government informant, and 18 U.S.C. 2511(2)(c) permits interception of a conversation without court order if one of the parties to the communication has given prior consent to the interception.

[5] Review of the same contention was declined in *Vigi* v. *United States*, No. 75-101, certiorari denied October 20, 1975. See also *Joseph* v. *United States*, No. 75-600, *Ganem* v. *United States*, No. 75-611, and *Stanley* v. *United States*, No. 75-762, petitions for writs of certiorari pending, where this issue is also raised.



petitioner concedes (Pet. 12), the Attorney General himself actually authorized the application at issue here; thus it cannot be said that there was a "failure to satisfy any of those statutory requirements that directly and substantially implement the congressional intention to limit the use of intercept procedures * * *." *United States* v. *Giordano*, 416 U.S. 505, 527; *United States* v. *Chavez*, 416 U.S. 562. See also *United States* v. *Acon*, 513 F.2d 513, 516-519 (C.A. 3); *United States* v. *Robertson*, 504 F.2d 289, 291-292 (C.A. 5), certiorari denied, 421 U.S. 913. As the court below correctly ruled (Pet. App. 8), where, as here, the Attorney General personally authorizes the order, "the drastic remedy of suppression is not required where this technical violation occurs and the general purpose of the statute has been preserved."

b. Nor is there any substance to petitioner Scharf's claim (No. 75-5709, pp. 13-14) that the information set forth in the affidavit of the agent in support of the wire interception order (Pet. No. 75-5709, App. G) was insufficient to support the district court's finding of probable cause.

The standard to be applied in determining probable cause for a wire interception order is the same as that applied to determine whether probable cause exists to justify a conventional search warrant. *United States* v. *Armocida*, 515 F.2d 29, 36 (C.A. 3), certiorari denied, No. 74-6683, October 6, 1975; *United States* v. *Falcone*, 505 F.2d 478, 481 (C.A. 3), certiorari denied, 420 U.S. 955. Tested by this traditional standard, the affidavit for the wire inter-

ception order here sufficiently established probable cause to believe that petitioner Scharf was engaged in a cocaine distribution conspiracy and that he used the specified telephones in furtherance thereof. See 18 U.S.C. 2518(3)(a) and (b).

The court below summarized the information contained in the affidavit as follows (Pet. App. 9):

> [The agent's] affidavit set out detailed information garnered from a reliable informant and corroborated by BNDD agents' surveillance and independent investigation. This informant was introduced to Scharf in early September 1971 by a mutual acquaintance for the purpose of obtaining cocaine. According to the agent's affidavit, Scharf told the informant that he could supply unlimited cocaine and he gave Scharf [sic][6] a sample. A week later the informant purchased a half-pound of cocaine from Scharf in a transaction funded and surveilled by BNDD agents who were unable to see the actual transfer. At this time, a telephone relationship between Scharf and the informant was established, and, in response to a suggestion of the informant, Scharf refused to meet the informant's boss. Between September 15 and October 15, Scharf and the informant maintained telephone contact, on one of Sapstein's phones, involving a pending sale of narcotics which included an extra measure to make up for the poorer quality of the first transaction as compared with the sample. Scharf told the informant that his source was a man named George

[6] The affidavit actually states that petitioner provided the informant with the sample (Pet. No. 75-5709, App. G 4).



> in Jamaica. BNDD agents checked the phone records and learned that 23 calls were made from the Sapstein phone to a George Lawson in Jamaica. The informant also told the agents that Scharf was reorganizing his business after November 2, 1971 and later he gave to agents the two new nonpublished numbers which had been installed at the Scharf—Sapstein apartment and which were provided to him by Scharf.

This description demonstrates that the affidavit in support of the wire interception order[7] contained ample information to support a finding of probable cause as to Scharf's continuing narcotics-related activity and his use of the telephones subscribed to by his roommate. Cf. *United States* v. *James*, 494 F.2d 1007, 1015 (C.A.D.C.), certiorari denied *sub nom. Jackson* v. *United States*, 419 U.S. 1020.

c. Petitioners further contend (Pet. No. 75-5709, pp. 14-16; Pet. No. 75-659, pp. 25-26) that the evidence gained from the interceptions should have been suppressed because the government delayed for fifty-seven days in presenting the tapes of the intercepted conversations to the district court for sealing and because the seals on some of the boxes containing the tapes were broken prior to trial.

During the course of the interception period the monitoring agent placed each reel of tape as it was used up in a lock-seal envelope and initialled and dated the envelope over the seal. On November 26, 1971, when the wiretap expired, the agent in charge

[7] The order was issued on November 11, 1971 (Pet. App. 8).

took personal custody of the envelopes and placed them in a locked filing cabinet in the office of the Bureau of Narcotics and Dangerous Drugs.

On January 21, 1972, the agent removed the envelopes and took them to District Judge Austin's chambers[8] where they were placed in three boxes and sealed. Thereafter the boxes were kept either in the agent's office or in an evidence vault at the BNDD offices. Although the seals of two of the boxes were found to have been broken before trial, the agents who initially sealed the tapes in the locked envelopes testified that the envelopes were still in the same sealed condition they had been in when first sealed (Tr. 745, 751, 780, 788, 790).

Although the delay in presenting the tapes to the district court amounted to a failure to comply with the directive of 18 U.S.C. 2518(8)(a) that such tapes be presented "[i]mmediately," the court below properly determined that suppression was not warranted. As we argued in our brief in opposition in *Berger* v. *United States* and *Falcone* v. *United States*, Nos. 74-5500 and 74-5619, certiorari denied, 420 U.S. 955,[9] the interpretation of Section 2518(8)(a)

[8] Chief Judge Robson had authorized the wire interception, but we agree with the court below that the government's "failure" to present the tapes to the district court judge who initially authorized the interception did not amount to a noncompliance with Title III warranting suppression. As the court ruled (Pet. App. 12), "[t]he purpose to be served by judicial sealing was accomplished and was no less effective by virtue of the difference of judicial personnel."

[9] We are sending each petitioner's counsel a copy of that brief.



is not an issue warranting review by this Court. There is no conflict among the circuits, and the meaning of the statute is plain enough without judicial construction to provide guidance to law enforcement officials. Furthermore, as we explained in *Berger* and *Falcone*, *supra*, the Department of Justice has, since the date of the interceptions in that case (and this case as well), instituted particularized procedures to remind officials of the various steps necessary upon discontinuation of an interception, and we expect that this system will prevent similar delays from occurring in the future.[10]

In any event, suppression was not required. *United States* v. *Chavez*, 416 U.S. 562, 574-575, established that suppression under Section 2518(10)(a)(i) is appropriate only for violations that involve " 'statutory requirements that directly and substantially implement the congressional intention to limit the use of intercept procedures to those situations clearly calling for the employment of this extraordinary investigative device' ", (*id.* at 575, quoting *United States* v. *Giordano*, 416 U.S. 505, 527). Failure to seal the tapes immediately is not such a violation of

[10] On the date each authorization expires, a "tickler" system signals an attorney in the Special Operations Unit of the Department to telephone the supervising attorney in the field to remind him of the expiration and of his duties under the statute, including the immediate sealing requirement. In addition, on February 11, 1975, the Chief of the Organized Crime and Racketeering Section of the Department sent a special bulletin to the attorneys in charge of all strike forces and field offices reminding those attorneys and their staffs of the obligation to present tapes immediately for sealing.

the statute; it can have no effect on the decision to use intercept procedures. None of the important interests identified in *Chavez* or *Giordano* is implicated in this case. To the extent that the purpose of the sealing requirements is to assure the integrity of the tapes (see *United States* v. *Sklaroff*, 506 F.2d 837, 840 (C.A. 5), certiorari denied, No. 74-1249, October 6, 1975; *United States* v. *Falcone*, 505 F.2d 478, 484 (C.A. 3), certiorari denied, 420 U.S. 955), that purpose can be met in ways other than suppression. Immediate sealing is preferable because it eliminates any doubts about the integrity and confidentiality of the tapes and eliminates the need for an inquiry by the court, but we submit that the proper procedure when the tapes are not immediately sealed is to require the government, as a condition of the admissibility of the tapes, to demonstrate that it has preserved the integrity and the confidentiality of the tapes and thereby fulfilled the purpose of the immediate sealing requirement.

The government met that burden in this case by showing at a pretrial hearing and at trial that it took proper and sufficient steps through the use of the lock-seal envelopes to assure the integrity of the tapes. Moreover, as the court of appeals noted (Pet. App. 13), petitioners have never challenged the integrity of the tapes or suggested that the government acted out of improper motive in delaying the presentation for sealing, or that any advantage to the government or prejudice to petitioners has resulted from the delay. In short, no statutory purpose was frustrated, and suppression was not warranted.



Petitioners have similarly never claimed that the seals were broken due to any connivance or misbehavior by government officials, and although the court of appeals found the government's proffered explanation for the broken seals "somewhat speculative" (Pet. App. 13),[11] this was necessarily a finding that the explanation was "satisfactory" for the purposes of Section 2518(8)(a), since the court held that the tapes were admissible. There is no need for further review of this essentially factual situation, especially absent any indication of bad motive or conscious wrongdoing on the part of the government officials involved.

d. Petitioners did not receive notice and inventory of the wire interception until April 1974, which was two years after its termination (but three months prior to the filing of their motions to suppress) (Pet. App. 13). They assert (Pet. No. 75-659, p. 26; No. 75-5709, pp. 16-17) that suppression of the tapes is mandated by the failure to have the inventory served on them within 90 days, as provided for in 18 U.S.C. 2518(8)(d). But petitioners have not demonstrated any prejudice whatever resulting from the delay, and accordingly the court of appeals correctly

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[11] The government has never pretended to know for certain how the seals were broken, except that they were not knowingly broken by any government official. The explanation which seemed most plausible to the agent to whose custody the sealed boxes were committed was that the seals became broken due to their proximity to the office air-conditioning-heating system vents.

determined (Pet. App. 13) that suppression was unnecessary.

The intent of Section 2518(8)(d) is that "all authorized interceptions must *eventually* become known at least to the subject." S. Rep. No. 1097, 90th Cong., 2d Sess., p. 105 (1968) (emphasis added). We submit that (at least absent any indication of repeated violations by the government that might arguably warrant suppression as a deterrent) noncompliance with the 90-day provision does not automatically require suppression; rather, some showing of actual prejudice is necessary. *United States* v. *Rizzo*, 492 F.2d 443, 447 (C.A. 2), certiorari denied, 417 U.S. 944. This has been held to be the rule even where the inventory was never filed, yet actual notice was received. *United States* v. *Iannelli*, 477 F.2d 999, 1003 (C.A. 3), affirmed on other grounds, 420 U.S. 770. Accordingly, since petitioners have neither alleged nor demonstrated prejudice by the delay in the present case, further review of the decision of the court below on this issue is not merited.[12]

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[12] In *United States* v. *Donovan*, No. 75-212, petition for a writ of certiorari pending, the government has sought review of the court of appeals' ruling (513 F.2d 337 (C.A. 6)) that evidence must automatically be suppressed as to any person whose conversations were overheard but who did not receive notice of the interceptions. There is no reason to hold the instant case pending action on that petition since, unlike in *Donovan*, petitioners here actually received notice of the interception and the only question is whether tardy notice requires suppression without a showing of prejudice by petitioners. There is no conflict among the circuits on that question.



e. Petitioner Scharf's final attack on the wire interception (Pet. No. 75-5709, p. 17) consists of his claim that the agent's affidavit (Pet. No. 75-5709, App. G) failed to set forth sufficient facts to satisfy the requirements of 18 U.S.C. 2518(1)(c) and (3)(c) that a finding be made that other normal investigative procedures were first tried or appeared unlikely to succeed if tried.

We have recently discussed the requirements of Section 2518(1)(c) and (3)(c) in our brief in *Anderson* v. *United States*, No. 75-500, petition for a writ of certiorari pending, to which we respectfully refer the Court (and a copy of which we are sending each of petitioner's counsel). To repeat briefly our argument more fully developed therein, the statutory requirement that normal investigative procedures be first exhausted must be reviewed in a practical and common sense fashion. *United States* v. *James*, *supra*, 494 F.2d at 1015-1016; S. Rep. No. 1097, *supra*, at 101. The requirement of Section 2518(1)(c) "is simply designed to assure that wiretapping is not resorted to in situations where traditional investigative techniques would suffice to expose the crime." *United States* v. *Kahn*, 415 U.S. 143, 153, n. 12. The statute does not require that normal means of investigation must, in fact, actually be tried, but only that they be tried if likely to succeed. *United States* v. *Pacheco*, 489 F.2d 554, 565 (C.A. 5), certiorari denied, 421 U.S. 909; *United States* v. *Falcone*, 364 F. Supp. 877, 889 (D. N.J.), affirmed, 505 F.2d 478 (C.A. 3), certiorari denied, 420 U.S. 955.

In the present case the authorizing judge properly found that normal investigative procedures were inadequate. As the court of appeals noted (Pet. App. 10):

> In this instance it was clear from the agent's affidavit that other investigatory techniques were inadequate inasmuch as surveillance had not been totally successful and since Scharf had exhibited such reluctance to meet with the informer's boss. Furthermore, in view of the fact that Scharf's source was in Jamaica, wiretapping was the only feasible means suitable to determine delivery techniques, times, and places.

Moreover, the affidavit (Pet. No. 75-5709, App. G) showed that prior to the wire interception application a two-month investigation of the narcotics distribution conspiracy had been conducted through the use of surveillance and an informant.[13] However, the extent of that conspiracy, the identity of the partici-

[13] This distinguishes this case factually from the recent decision of a panel of the Ninth Circuit in *United States* v. *Kalustian*, No. 74-3314, decided August 4, 1975, opinion amended, December 11, 1975. While the changes in the opinion in *Kalustian* somewhat moderate the disparities between it and virtually all other appellate decisions to consider this issue, it remains inconsistent with decisions of other panels of the Ninth Circuit, and we have petitioned for a rehearing *en banc*. We discuss that case at greater length in our brief in *Anderson, supra*. This case is not in any event a proper vehicle for this Court to consider the issues raised in *Kalustian* since, unlike the situation there, numerous normal investigatory procedures were utilized and the court was informed of that fact.



pants, and their precise means of accomplishing its objectives (*e.g.*, time, place and manner of importation and distribution) could not be discovered through normal means due to the source's location in Jamaica and petitioner's wariness, as evidenced by his refusal to deal with the informant's "boss." See *United States* v. *James, supra*, 494 F.2d at 1016. Thus, the finding of the courts below that normal investigative procedures had been unsuccessfully tried and appeared unlikely to succeed if continued was correct and merits no further review.

2. Petitioner Scharf contends (Pet. No. 75-5709, pp. 19-20) that Circuit Rule 28 of the United States Court of Appeals for the Seventh Circuit,[14] providing for written orders to be designated as "unpublished" (as was the order in the present case), is unconstitutional.

An appellate court is not constitutionally required to write any opinion at all in disposing of an appeal (see *National Labor Relations Board* v. *Amalgamated Cloth. Wkrs. of Amer., AFL-CIO, L. 990*, 430 F.2d 966, 971-972 (C.A. 5)), and it follows that if it does write an opinion it may deny publication. Whatever the merits of a contrary argument when presented by a party seeking to rely on an unpublished order of an appellate court (see Gardner, *Ninth Circuit's Unpublished Opinions: Denial of Equal Jus-*

[14] Circuit Rule 28 declares that its policy is to "reduce the proliferation of published opinions." Cf. *Taylor* v. *McKeithen*, 407 U.S. 191, 194-195, n. 4.

*tice?*, 61 A.B.A.J. 1224 (1975)), petitioner has not demonstrated how Circuit Rule 28 has denied him his constitutional rights or prejudiced him in any way. At most he seeks to litigate the question whether Circuit Rule 28 may work some sort of harm to a hypothetical future litigant; this contention fails to establish that petitioner himself has suffered " 'some threatened or actual injury' " giving him " 'such a personal stake in the outcome of the controversy' " as to confer standing on him to raise this issue. *Warth* v. *Seldin*, 422 U.S. 490, 498, 499.

3. The court of appeals, in an opinion on which we rely, properly held that petitioner Lawson was not deprived of a speedy trial (Pet. App. 4-5). As the court noted, trial of the original indictment was postponed because the government's chief witness had disappeared. On petitioner's demand for immediate trial, the government moved to dismiss the indictment. After the witness was located, a second indictment was returned in March 1974, and trial commenced in October 1974. It is only this latter seven-month delay of which Lawson can reasonably complain; absent a showing of prejudice (which he does not make), he received any remedy to which he may have been entitled for delay of trial of the first indictment when that indictment was dismissed. The delay between locating the witness and the return of the second indictment was justified because the witness gave further information that necessitated additional investigation. Furthermore, over half of the seven-month delay after return of the second indictment was occasioned by various pretrial motions filed by the defense. The remaining three-month delay was necessary to settle upon a convenient trial date for what was predicted to be a lengthy trial. In these circumstances, and without a particularized showing of any harm to petitioner, the principles of *Barker* v. *Wingo*, 407 U.S. 514, have not been transgressed.



4. The petition on its face contradicts Lawson's assertion (Pet. No. 75-659, pp. 29-31) that dismissal of the first indictment was understood by himself, the district court, and the government to be a dismissal with prejudice. Lawson sought a dismissal with prejudice to preclude reindictment, but the government objected, arguing that the question should be settled only in the event that the government did reindict. The court then stated its belief that it could not prevent the government from dismissing the first indictment, and Lawson's counsel replied that he did not in fact want the court to prevent the dismissal. Nothing in the colloquy (see Pet. No. 75-659, p. 30) supports petitioner's contention that "the clear import to all the parties including the Court was that the dismissal * * * was 'with prejudice.' " Furthermore, a dismissal for failure to prosecute is ordinarily without prejudice (*e.g.*, *United States* v. *Davis*, 487 F.2d 112, 118 (C.A. 5), certiorari denied, 415 U.S. 981; *DeMarrias* v. *United States*, 487 F.2d 19, 21 (C.A. 8), certiorari denied, 415 U.S. 980; *United States* v. *Clay*, 481 F.2d 133, 135 (C.A. 7), certiorari denied, 414 U.S. 1009), and this should be particu-

larly true when the failure is the result of the unavailability of a key witness.

5. Finally, there is no merit to Lawson's claim (Pet. No. 75-659, pp. 26-29) that the evidence showed multiple conspiracies. As shown in the statement, *supra*, pp. 3-5, the evidence showed a single conspiracy to distribute cocaine, which Lawson helped to initiate by acting as the intermediary who brought the other parties together, an action for which, as the evidence shows, he expected and sought compensation out of the proceeds of the distribution.

## CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petitions for a writ of certiorari should be denied.

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